

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter	)	
	)	
TOUCHTEL CORPORATION, Assignor	)	File Nos. 0006077769, 0006127513
	)	
PENRYN CORPORATION, Assignee	)	
	)	
Application to Assign Broadband Radio Service	)	
Station WNTA626	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: December 23, 2014**

**Released: December 23, 2014**

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we dismiss a petition for reconsideration filed against a consummation notice for an assignment application because the petitioners lack standing. We further note that the basis for the petition for reconsideration is a disagreement regarding a settlement agreement and find that private contractual disputes are more appropriately addressed in a court of competent jurisdiction.

2. *Background.* On December 6, 2013, various divisions of the Wireless Telecommunications Bureau (“Bureau”) granted requests filed by Warren Havens, Skybridge Spectrum Foundation (“Skybridge”), Verde Systems, LLC (“Verde”), Environmental, LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Environemntal-2 LLC, V2G LLC, ATLIS Wireless LLC, Paging Systems, Inc. (“PSI”) and TouchTel Corp. (“TouchTel”) to dismiss various pleadings the parties had filed against each other with the Commission.<sup>1</sup> The requests were filed pursuant to a settlement agreement entered into between the parties resolving disputes before the Commission and in federal court.<sup>2</sup> Among the pleadings dismissed was an application for review challenging the grant of an application for renewal of license of Broadband Radio Service (“BRS”) License WNTA626, licensed to TouchTel.<sup>3</sup>

3. On January 24, 2014, an application was filed to assign Broadband Radio Service Station WNTA626 from Touch Tel to Penryn Corporation (“Penryn”).<sup>4</sup> The Bureau consented to the application on January 25, 2014, and the public notice for the Bureau’s action on the Assignment Application was released on January 29, 2014.<sup>5</sup> On January 30, 2014, the Bureau was notified that the transaction was consummated.<sup>6</sup> On February 12, 2014, the Bureau released a public notice of the consummation.<sup>7</sup>

<sup>1</sup> See Letter from Scot Stone, Deputy Chief, Mobility Division, John Schauble, Deputy Chief, Broadband Division, and Gary Michaels, Deputy Chief, Auction and Spectrum Access Division, Wireless Telecommunications Bureau to Warren C. Havens, Audrey P. Rasmussen and David Hill (Dec. 6, 2013).

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> File No. 0006077769 (filed Jan. 24, 2014) (“Assignment Application”).

<sup>5</sup> See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public* (continued....)

4. Warren C. Havens, Environmental LLC, Verde, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge, and V2G LLC (collectively, “Petitioners”) contend that, on February 20, 2014, they learned that PSI filed notices of consummation of certain partitioned license assignments by Verde and Skybridge to PSI but states that Verde and Skybridge never “executed the assignment to PSI reported on in the notifications of consummation, as required in the settlement agreement, as part of the closing of certain reciprocal license assignments, which included the two assignments that PSI reported as consummated.”<sup>8</sup>

5. On March 14, 2014, Petitioners filed a conditional petition for reconsideration of the assignment of Station WNTA626 from TouchTel to Penryn.<sup>9</sup> Petitioners state that “[t]his filing is part of action by Petitioners to mitigate damages caused by Touch Tel and Paging Systems, Inc. . . . in violation of the settlement agreement and fair competition.”<sup>10</sup> Petitioners explain that the petition is “conditional” because it “is solely a ‘protective’ filing . . . [to be] considered only if Touch Tel and Paging Systems, Inc. do not cure their actions in violation of certain FCC law and procedure” with respect to an application in a different wireless service.<sup>11</sup> Petitioners filed the instant Petition for “conditional” relief asking the Commission to not take action on the instant Assignment Application “until the above noted matters with regard to described PSI-filed notifications of consummation and actions to withdraw past pleadings are decided upon.”<sup>12</sup>

6. On March 25, 2014, Penryn filed an Opposition to the Petition.<sup>13</sup> Penryn requests that the Commission dismiss the Petition as untimely filed and for lack of standing.<sup>14</sup> Penryn filed a Supplement to its Opposition on July 17, 2014.<sup>15</sup>

7. *Discussion.* We dismiss the Petition for lack of standing to file against the Assignment Application. To establish party-in-interest standing to challenge an application, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.<sup>16</sup> In

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Notice, Report No. 9325 (rel. Jan. 29, 2014) at 7.

<sup>6</sup> File No. 0006127513 (filed Jan. 30, 2014) (“Consummation Notice”).

<sup>7</sup> See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 9359 (rel. Feb. 12, 2014) at 16.

<sup>8</sup> Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, and V2G LLC, Petition for Reconsideration, (filed Mar. 14, 2014) (Petition) at 2.

<sup>9</sup> Petition.

<sup>10</sup> Petition at 1.

<sup>11</sup> Petition at 1.

<sup>12</sup> Petition at 3-4.

<sup>13</sup> Penryn Corporation, Opposition to Conditional Petition for Reconsideration (filed Mar. 25, 2014) (“Opposition”).

<sup>14</sup> See Opposition at 2-3.

<sup>15</sup> Penryn Corporation, Supplement to Opposition to Conditional Petition for Reconsideration (filed July 17, 2014) (“Supplement”).

<sup>16</sup> See, e.g., Applications of AT&T Mobility Spectrum LLC, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16465 ¶ 16 (2012); Wireless Co., L.P., *Order*, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) (“Wireless Co.”), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). See also *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.<sup>17</sup> To demonstrate a causal link, petitioners must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.<sup>18</sup> For these purposes, an injury must be both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”<sup>19</sup> Petitioners provide no explanation as to how they would be injured by the grant of the Assignment Application or how denying the Assignment Application would remedy any harm they allege with respect to the settlement between themselves and PSI. Indeed, the only issue raised by Havens in the instant Petition is not specific to Station WNTA626 but relates to different licenses in another service. We also note that no allegation is raised as to any defect in the instant Assignment Application or Consummation Notice. Accordingly, we find that Petitioners have failed to demonstrate standing to file the instant Petition.

8. We recognize that an informal objection may be filed pursuant to Section 1.41 of the Commission’s Rules<sup>20</sup> without demonstrating standing. However, the Commission has discretion whether or not to consider an informal objection.<sup>21</sup> In this case, we note that the only issue raised by Petitioners is not specific to Station WNTA626. Moreover, we note that Petitioners have filed a separate petition for reconsideration filed against the application and consummation where the alleged defect occurs.<sup>22</sup> We also note that the Commission has consistently refused to become involved in private contractual matters that can best be resolved in a court of competent jurisdiction.<sup>23</sup> The Commission has held that it “generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law.”<sup>24</sup> Here, the parties are actively litigating the issues in court. Penryn reports that the United States District

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<sup>17</sup> *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7.

<sup>18</sup> *Id.* Because “a licensing proceeding before the Commission is not an Article III proceeding,” the Commission may determine in the public interest to allow participation by parties pursuant to Section 309(d) of the Communications Act who would lack Article III standing. *Channel 32 Hispanic Broadcasters, Ltd.*, *Order*, 15 FCC Rcd 22649, 22651 ¶ 7 (2000), *aff’d per curiam*, 22 Fed. Appx. 12 (2001). However, wireless applications have generally been reviewed using the foregoing Article III standard. *Rockne Educational Television, Inc.*, *Memorandum Opinion and Order*, 26 FCC Rcd 14402, 14405 ¶ 7 (WTB BD 2011). We find no public interest reason to depart from this practice here. *See Airadigm Communications, Inc.*, *Order on Reconsideration*, 21 FCC Rcd 3893, 3897 ¶ 14 & n.30 (WTB 2006), *review dismissed*, 26 FCC Rcd 6739 (WTB 2011).

<sup>19</sup> *Conference Group, LLC v. FCC*, 720 F.3d 956 (D.C. Cir. 2013), *quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

<sup>20</sup> *See* 47 C.F.R. § 1.41.

<sup>21</sup> *See, e.g.*, Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14021 n.335 (2005) (“*Sprint-Nextel*”) (*citing* Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp., *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21547 n.196 (2004)).

<sup>22</sup> *See* Petition for Reconsideration, Warren Havens, Verde Systems LLC and Skybridge Spectrum Foundation, File Nos. 0006156961 and 0006156952 (filed Mar. 28, 2014). *See also* Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450 (2010) (allegations relating to other licenses that are the subject of other pending proceedings are more appropriately addressed in those proceedings); Paging Systems, Inc., *et al.*, *Order on Reconsideration*, 26 FCC Rcd 16573 (2011) (the Commission will not encumber proceedings involving the licensee’s other licenses with consideration of the pending character allegations made in the principal proceeding).

<sup>23</sup> S.A. Dawson, *Memorandum Opinion and Order*, 17 FCC Rcd 472, 474 n.15 (WTB 2002) *citing* Airtouch Paging, Inc., *Order*, 14 FCC Rcd 9658 (WTB CWB P&RB 1999); *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

<sup>24</sup> S.A. Dawson, *supra*, 17 FCC Rcd at 474 n.15.

Court for the District of New Jersey has granted a motion to enforce the settlement agreement.<sup>25</sup> Petitioners have filed an appeal with the United States Court of Appeals for the Third Circuit.<sup>26</sup> Based on the above, we decline to consider the pleading as an informal objection.<sup>27</sup>

9. *Ordering Clause.* Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Conditional Petition for Reconsideration filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, and V2G LLC on March 14, 2014 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>25</sup> See Supplement.

<sup>26</sup> See e-mail from Warren Havens to Stanislava Kimball, Mobility Division, Wireless Telecommunications Bureau (Nov. 19, 2014), *filed in* File Nos. 0006156961 and 0006156962.

<sup>27</sup> In light of our decision to dismiss the Petition for lack of standing, we need not address Penryn's argument that the Petition was untimely filed. Accordingly, we are not deciding whether the Petition was timely filed.